



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/172308

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 24, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 05, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed a \$150 FoodShare (FS) overpayment for FS benefits that the petitioner received in December 2015 pending the outcome of a dismissed appeal.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent the petitioner a notice stating that effective December 1, 2015 her monthly FS benefits would be reduced by \$150. In November 2015 the petitioner requested a fair hearing regarding this reduction. She requested that she received her current FS benefits continue pending the outcome of the appeal. The Fair Hearing Request form specifically states that this

continuation may cause an overpayment of benefits, which the recipient would be responsible to repay.

3. The agency issued \$150 of auxiliary FS benefits to the petitioner. These were the petitioner's restored benefits pending the outcome of her appeal. The agency issued the petitioner her monthly FS benefits for December 2015 separately.
4. The petitioner came to the December 3, 2015 hearing. She spoke to an agency worker. She explained to the worker that she paid \$100 in monthly rent plus she was responsible for all utilities. The agency worker entered this new information into the system, and explained that effective January 1, 2016 the petitioner's monthly FS allotment would increase.
5. The petitioner submitted a voluntary withdrawal form for her appeal. On December 4, 2015 the Division of Hearings and Appeals issued a written decision dismissing the petitioner's appeal based on her written voluntary withdrawal.
6. On February 18, 2016 the agency sent the petitioner an overpayment notice stating that she was overpaid \$150 in FS benefits in December 2015.
7. On February 26, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. This includes when a recipient files an appeal, receives a continuation of benefits pending the appeal, and then the appeal is resolved adverse to the recipient. FoodShare Wisconsin Handbook, 7.3.1.9. Here, the petitioner requested an appeal. While her appeal was pending she presented new information to the agency. The agency updated her benefits going forward, and she withdrew her appeal. Because she withdrew her appeal, her appeal was dismissed, and she was not entitled to the additional \$150 auxiliary benefits issued in December 2015. That is the amount of the overpayment.

I further note that the alleged overpayment occurred only 2 months prior to the discovery date, so the non-client error recovery method is clearly appropriate under law. Thus, even if it was the agency's miscommunication error as the petitioner alleges, the agency must establish and collect this overpayment. The agency has presented a copy of the prior FS decision, and the FoodShare notice and worksheets demonstrating the computations of the overpayment at issue here. Therefore, I must conclude that the agency correctly established this overpayment.

### **CONCLUSIONS OF LAW**

The agency correctly assessed a \$150 FS overpayment for FS benefits that the petitioner received in December 2015 pending the outcome of a dismissed appeal.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of April, 2016

---

\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 6, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability